

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 19-1129V

UNPUBLISHED

KATHY BRIMNER,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 14, 2021

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Tetanus Diphtheria acellular  
Pertussis (Tdap) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*Gary A Butler, Massa Butler Giglione, Pittsburgh, PA, for petitioner.*

*Darryl R. Wishard, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION AWARDING DAMAGES**<sup>1</sup>

On August 5, 2019, Kathy Brimner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”) as a result of her May 13, 2018 Tetanus Diphtheria acellular Pertussis (“Tdap”) vaccination. Petition at 1,6-7. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 18, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On January 14, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$76,045.45, consisting of \$75,000.00 for pain and suffering, and \$1,045.45 for past unreimbursed

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

expenses. Proffer at 1-2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$76,045.45 (consisting of \$75,000.00 for pain and suffering, and \$1,045.45 for past unreimbursed expenses) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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No. 19-1129V ECF

Chief Special Master Corcoran

**PROFFER ON AWARD OF COMPENSATION<sup>1</sup>**

**I. Procedural History**

On August 5, 2019, Kathy Brimner (“petitioner”) file a petition alleging that a tetanus-diphtheria-acellular pertussis (“Tdap”) vaccination that she received on May 13, 2018, caused a shoulder injury related to vaccine administration (“SIRVA”). *See* Petition. On December 15, 2020, respondent filed his Vaccine Rule 4(c) report, conceding a Table injury for SIRVA. On December 18, 2020, Chief Special Master Corcoran issued a ruling on entitlement, finding that petitioner was entitled to compensation for SIRVA.

**II. Items of Compensation**

Based upon the evidence of record, respondent proffers that petitioner should be awarded a lump sum of **\$76,045.45**, consisting of \$75,000.00 for pain and suffering, and \$1,045.45 for past unreimbursed expenses. This amount represents all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

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<sup>1</sup> This Proffer does not include attorneys’ fees and costs, which the parties intend to address after the Damages Decision is issued.

### **III. Form of the Award**

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of **\$76,045.45**, in the form of a check payable to petitioner.<sup>2</sup>

Petitioner agrees.

Respectfully submitted,

JEFFREY BOSSERT CLARK  
Acting Assistant Attorney General

C. SALVATORE D’ALESSIO  
Acting Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Acting Deputy Director  
Torts Branch, Civil Division

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Assistant Director  
Torts Branch, Civil Division

*/s/Darryl R. Wishard*  
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Dated: January 14, 2021

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<sup>2</sup> Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.